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In The

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-156

DALLAS CAP & EMBLEM MFG., INC.

Petitioner,

v.

BOSTON PROFESSIONAL HOCKEY ASSOCIATION, INC.,
NIAGARA FRONTIER HOCKEY CORP.,
CHARLES O. FINLEY & COMPANY, INC.,
CHICAGO BLACKHAWK HOCKEY TEAM, INC.,
THE DETROIT HOCKEY CLUB, INC.,
CALIFORNIA SPORTS INCORPORATED,
NORTHSTAR FINANCIAL CORPORATION,
MADISON SQUARE GARDEN CORPORATION,
THE PHILADELPHIA HOCKEY CLUB, INC.,
PITTSBURGH PENGUIN PARTNERS,
MISSOURI ARENA CORPORATION,
MAPLE LEAF GARDENS LIMITED,
MEDICAL INVESTMENT CORPORATION,
AND NATIONAL HOCKEY LEAGUE,

Respondents.

PETITION FOR REHEARING

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Respondents.

PETITION FOR REHEARING

Petitioner, Dallas Cap & Emblem Mfg., Inc., respectfully petitions this Honorable Court for a rehearing of its Order denying Petitioner's Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit. The Supreme Court's Order denying Petitioner's Petition for Writ of Certiorari, No. 75176, was entered October 6, 1975.

SINCE PETITIONER'S PETITION FOR WRIT OF CERTIORARI, A PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, FIRST JUDICIAL DISTRICT, SECOND DIVISION, HAS BEEN FILED WITH THIS COURT RAISING QUESTIONS IDENTICAL TO THOSE RAISED IN THE PRESENT CASE AND EVIDENCING ADDITIONAL NEED FOR A REVIEW BY THIS COURT OF THE SUBSTANTIAL ISSUES PRESENTED.

Since filing its Petition for Writ of Certiorari, Petitioner, Dallas Cap & Emblem Mfg., Inc., has learned that a closely related Petition for Writ of Certiorari has been filed with this Court. The related Petition for Writ of Certiorari, No. 75615, was filed by Consumer Enterprises, Inc., the respondent being the National Football League Properties, Inc. The petition filed by Consumer Enterprises, Inc. raises essentially identical questions presented by Petitioner's Petition for Writ of Certiorari but concerning the right to reproduce emblems of the National Football League instead of those of the National Hockey League. The identical questions raised include:

(1) Whether the laws governing trademark rights may be used to protect a copyrightable symbol in perpetuity when the statutory copyright, which is of limited duration, has been clearly waived;

(2) Whether a copyrightable symbol, on which copyright was clearly waived, may serve as a basis for action under the trademark laws against one making and selling a reproduction of such symbol to the public, when the reproduction of the symbol itself is being sold entirely apart from any goods or services; and

(3) Whether federal supremacy and preemption in the field of copyright monopoly permits a work of art on which copyright had been waived to be protected under state unfair competition law, when that work of art is sold as a thing in itself apart from goods and services, merely because the work of art was popularized by the trademark owner's use of the mark in connection with performing certain services.

In the related case, petitioner, Consumer Enterprises, Inc., manufactures and sells cloth emblems of the member clubs of the National Football League. In an action for trademark infringement and unfair competition, respondent, the National Football League Properties, Inc., was granted a temporary injunction by the Circuit Court of Cook County of Illinois, Municipal Department, First Division, prohibiting petitioner from making and selling cloth patches embroidered with the emblems of the member clubs of the National Football League. The Illinois Appellate Court, First District, Second Division, modified the preliminary injunction to allow petitioner to sell the cloth patches with a disclaimer that the National Football League or any of its member clubs were not the source of origin or sponsor of the patches.

The National Football League Properties' petition for reconsideration in the Illinois Appellate Court led to a total preliminary injunction. A Petition for Writ of Certiorari was filed with this Honorable Court after review in the Supreme Court of Illinois was denied.

The history of this related case evidences, as does that of the present case, conflict between the lower and appellate

courts on the issues presented. This related case further illustrates the significant public importance of the issues presented and the far reaching effect which the resolution of these issues will have on the entire sports spectrum as well as other analogous areas. Petitioner respectfully petitions this Honorable Court for a rehearing of its Order denying Petitioner's Petition for Writ of Certiorari in order that the questions posed by the present case be considered in conjunction with those points presented by the above identified related petition, and that the Petitioner's Petition for Writ of Certiorari not be denied until the points presented and raised by the related petition have been fully considered.

CONCLUSION

It is respectfully submitted that this Honorable Court should reconsider its Order of October 6, 1975, denying Petitioner's Petition for Writ of Certiorari, and, on rehearing, issue a Writ of Certiorari to the Fifth Circuit Court of Appeals to consider all questions raised therein.

Respectfully submitted,

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